IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11134 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANBHAI PRABHUBHAI KAPADIA

Versus

UNION OF INDIA THRO' SECRETARY

Appearance:

1. Special Civil Application No. 11134 of 2002

MR PR NANAVATI for Petitioner No. 1

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, learned Sr. Central Government Standing Counsel for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. Short facts, which require to be noted for the purpose of disposal of this petition, are as under :

3. The petitioner had filed an appeal before the CEGAT. It was directed by the CEGAT that the petitioner should deposit a sum of Rs. 75,000/- by way of pre-deposit on or before 12.6.2002. As the petitioner did not deposit the said amount, the appeal came to be dismissed on 5.8.2002. Being aggrieved by the said order dismissing the appeal, the petitioner has approached this court.

4. Learned advocate Shri P.R. Nanavati appearing for the petitioner has submitted that during the pendency of this petition a sum of Rs. 50,000/- has been deposited by the petitioner. It has been thus submitted by him that the condition on which the appeal was to be heard has been now complied with by the petitioner. He has placed on record a challan stating that a sum of Rs. 50,000/- has been deposited by the petitioner.

5. It has been submitted by learned advocate Shri Nanavati that only on account of default committed by the petitioner, the appeal has been dismissed without considering the same on its merits. It has been submitted by him that the appeal ought not to have been dismissed simply because the petitioner failed to deposit the amount, which he ought to have deposited.

6. On the other hand, Shri D.N. Patel, learned Sr. Standing Counsel, has submitted that as the petitioner had failed to deposit the pre-deposit as directed by the CEGAT, the appeal was rightly dismissed. It has been submitted by him that the subsequent deposit of this amount cannot help the petitioner and that should not be a ground for review of the impugned order.

7. We have heard the learned advocates. We have noted the fact that the amount which the petitioner was supposed to deposit has been now deposited. The learned Standing Counsel appearing for the respondent authorities

also could not dispute the fact that the amount has been now deposited by the petitioner.

8. Looking to the peculiar facts of the case, in our opinion, the petition deserves to be allowed because the petitioner has now deposited the amount, which he ought to have deposited earlier. In our opinion, ends of justice would be served if the appeal is restored to file because in that event, the petitioner will get a chance to argue his appeal on merits.

9. In the circumstances, the petition is allowed. The impugned order dated 5.8.2002 is quashed and set aside. The CEGAT is directed to hear the appeal on merits after restoring the appeal to file.

Rule is made absolute to the aforesaid extent with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

(hn)